IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 27397 of 1998

Between:

1 M.Suranarayan, S/o. Tataiah,
R/o.Vijayawada, Krishna District.
2 M. Ram Mohan Rao, S/o. Suryanarayana,
R/o. Vihayawada, Krishna District.
3 M.Lalita Kumari W/o. Ram Mohan Rao,
R/o. Vijayawada, Krishna District.
4 M.Durga Prasad, S/o. Surayanarayaba
R/o. Vijayawada, Krishna District.

..... PETITIONERS

AND

1 Government of Andhra Pradesh, Rep. by the Secretary,
Transport, Roads & Buildings Dept., Secretariat,
Hyderabad.
2 Regional Transport Authority,
Krishna District, Vijayawada, Rep. by Secretary.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, prefer by one in the nature of a writ of Mandamus, declaring the Resolution of the 2nd respondent Dt:22-8-1997 in Item No.15 (Circulation) revising the existing compounding fee fixed under Rule 217 of A.P.M.M.V.Rules 1989, issued by the 1st respondent under Sec.95 and 96 of M.V.Act, 1988 in lieu of cancellation of suspension of permits under Sec.86 of M.V.Act 1988 in respect of different types of irregularities committed within 24 months, as illegal, arbitrary, without jurisdiction and contrary to the provisions of M.V.Act, 1988 and rules made thereunder.

Counsel for the Petitioners: MR.B.SIVA RAMA KRISHNAIAH

Counsel for the Respondents: GP FOR TRANSPORT

The Court made the following :

ORDER:

This writ petition is filed seeking to challenge the resolution passed by the second respondent in Item No.15 (Circulation), dated 22-8-1997, revising the existing compounding fee fixed under Rule 217 of the Andhra Pradesh Motor Vehicles Rules, 1989, as illegal, arbitrary and without jurisdiction, apart from being contrary to the provisions of the Motor Vehicles Act, 1988 and the Rules made thereunder.

The learned counsel for the petitioners submitted that the subject matter of this writ petition is squarely covered by a judgment of this Court in **Jami Appala Swamy v. Regional Transport Authority, Srikakulam.** The operative portion of the said judgment reads as follows:

> "…Where law specifically contemplates a discretion to be used in individual cases, as evident from Section 86(5) of the Act and Rule 217 of the Rules, the same cannot be curtailed or eroded in any such manner as sought to be done under the impugned resolutions, which fetters the discretion vested in the individual Authority to come to a conclusion in a situation in regard to the different permit holders depending upon the facts of each case. Therefore, it has to be held that the impugned resolutions are totally without any power; authority and jurisdiction and are liable to be set aside. The impugned orders are, accordingly, set aside".

Recording the above submission of the learned Counsel for the petitioner, and following the above said judgment, the writ petition is allowed for the same and similar reasons. No costs.

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N.V. RAMANA, J

Date: 25-3-2005

Svv

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the Twenty Fifth day of March, Two thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Government of Andhra Pradesh,
Transport, Roads & Buildings Dept., Secretariat, Hyderabad.
2 The Secretary, Regional Transport Authority, Krishna District, Vijayawada.

3 Two CCs. to the Government Pleader for Transport, High Court Buildings, A.P., Hyderabad (OUT).

4 Two CD copies

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